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U. S. Supreme Court.

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AND

NATIONAL HONOR.

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JOHN W. FOSTER.

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"INTERNATIONAL ARBITRATION AND AWARDS.

"By George Ticknor Curtis.

"Printed for the Author, Washington, 1885."

Such is the title of a pamphlet which, as announced in the public press, the distinguished author has prepared for circulation in the Senate of the United States. The occasion for its publication is the pendency before that body of a convention between the United States and Mexico, providing for the retrial of two claims on which awards were rendered by a late commission, and which awards the Mexican government alleges were obtained through fraud and perjury. The writer divests himself of the character of a judicial advocate, in which he has attained such deserved eminence, and, making himself the champion of international arbitration, for which he manifests great devotion, he presents, from the high plane of public policy and peace among nations, a cogent appeal to the Senate to maintain in its integrity the binding character of international adjudications which have given our country such "an honorable rank among the nations of the earth." A subject of this importance, discussed under such circumstances, cannot fail to attract the attention of the high body to which it is presented, and secure a careful consideration of the author's views.

Mr. Curtis expresses great alarm lest the whole system of international arbitration may be overthrown by the ratification of the convention mentioned, and thus a matter of "ridiculous insignificance" may "bring about the hazard of a

great public mischief." It is to avoid this serious evil to the nations of the earth, that he enters upon a review of the diplomatic history of the United States, to show, first, that it has been the common practice of our Government to insert in its treaties a clause stipulating and providing for the final and conclusive character of the awards that were to be made; and, second, that all branches of the Government, executive, judicial and legislative, during a period of ninety years since the first claims commission was created by treaty, had recognized and enforced, with steadiness and fullness, their final and conclusive character. This he repeats and emphasizes by various forms of expression throughout his pamphlet. He avers that "there is no formula in our diplomatic records of a more fixed character;" that these commissions have been resorted to in order to effect something "that was never afterwards to be called in question;" that they are "tribunals of the first and last resort;" that to disturb the binding character and finality of an international award was contrary to "all the traditions of our diplomacy;" and, finally, that "this is the first time in our diplomatic history that an attempt has been made to overthrow the conclusive character of adjudications made under a treaty which stipulated that both the sovereign parties would abide by the decision."

If these declarations are confirmed by our diplomatic and domestic history, as the author so stoutly affirms, it must be confessed that he has laid a solid foundation for the appeal which he makes "to the good sense and firmness of the American Senate to adhere to the principles laid down * * rather than to the unwise and ill-considered experiment" of the pending treaty. In turning aside, for the moment, from his life study and practice of domestic jurisprudence, and in giving assurance that there is nothing technical in the rules of international law, he has emboldened me to attempt a somewhat more critical examination than he appears to have given of the diplomatic and domestic precedents which interpret and fix the extent of the "conclusive character of adjudications made under a treaty."

In the first place, however, I desire to call attention to a material misconception into which Mr. Curtis appears to have fallen, respecting the attitude of the Mexican government on this subject. That government has never questioned the final and binding effect upon itself of the awards of the Commission organized under the treaty of 1868, nor has it done, or omitted to do, a single act which could, in the slightest degree, expose it to the charge of bad faith, or even of hesitation in carrying out the stipulations of the treaty. Its attitude was explicitly stated by its diplomatic representative in Washington immediately after the dissolution of the Commission in 1876. In bringing to the attention of Secretary Fish the action of the Mexican counsel before the Commission, Sr. Avila, respecting the newly discovered evidence of fraud in the Weil and La Abra cases, Minister Mariscal used this language:

"It is not my intention, nor the intention of Sr. Avila, to open any question whatever, nor to put in doubt the final and conclusive character of the above-mentioned awards. As a proof of this, Sr. Avila begins his first statement by saying: 'that the Mexican government, in fulfillment of Art. 5 of the convention of July 8, 1868, considers the result of the proceedings of this Commission as a full, perfect and final settlement of all claims referred to said Commission.' I beg leave to call your attention to the fact that Sr. Avila only expresses afterwards the possibility that the Mexican government may, at some future time, have recourse to some proper authority of the United States to prove that the two claims he mentions were based on perjury, with a view that the sentiments of equity of the Government of the United States, once convinced that frauds have actually been committed, will then prevent the definite triumph of these frauds. It seems clear that if such an appeal should be made, it will not be resorted to as a means of discarding the obligation which binds Mexico, and that, should it prove unsuccessful, the Mexican government will recognize its obligation as before." (H. Ex. Doc., 103, 48th Cong., 1st sess., p. 149.)

This declaration has, in substance, been repeated at various times by the representatives of Mexico, and that government has promptly paid to the United States (sometimes under the most embarrassing circumstances) the annual installments stipulated in the treaty. So faithfully has it kept its plighted faith, that it has repeatedly awakened the admiration and called forth the commendation of our Government. Mr. Evarts, for in-

stance, in acknowledging to Sr. Zamacona the receipt of the fourth installment, says:

"I am alike honored and gratified at the opportunity thus afforded me to express the President's appreciation of the promptness and exactitude with which the government of a friendly sister republic thus meets its international obligations." (Ib., p. 606.) *

These declarations and the entire conduct of Mexico are a sufficient answer to the intimations that she is seeking "to frustrate the execution of the treaty," or "impair * * * or obstruct its operation." It will be shown hereafter that whatever action to that end has occurred has been taken, in order of time, first, by the Congress of the United States, second, by the Executive, and third, by the Supreme Court; and that all of these high powers have been inspired by a jealous care to preserve unstained "the honor of the United States."

In entering upon an examination of the diplomatic and domestic precedents affecting claims awards, it is important to bear in mind just what is proposed by the pending treaty. It appears from the extract therefrom published by Mr. Curtis that it only provides for a rehearing of two of the claims, hence it leaves the great body of the work of the Commission organized under the treaty of 1868 undisturbed, as 2,015 cases were referred to and decided by that tribunal. Are there any precedents for such action? Mr. Curtis says: "This is the first time in our diplomatic history that such an attempt has been made." I think it would not be difficult to cite instances where the Government of the United States has united with other nations by solemn treaties in referring important political questions to the arbitrament of a friendly sovereign, and has declined to execute the award when rendered; as in the arbitration by the King of the Netherlands of the northeastern

*The writer was a resident of the City of Mexico when the first installment under the treaty became due. General Diaz had just assumed the Presidency, after an armed contest which had exhausted the resources of the country. He found this international obligation to be met and the national treasury absolutely empty. To meet the emergency he called upon the merchants and bankers of the city, who loaned the treasury $300,000 at 12 per cent. interest.

It is also to be noted that payment is required in gold, and during the whole time the annual installments have been paid they have cost Mexico in exchange from 15 to 25 per cent. premium, the latter figure being nearer the rate of the last payments.

boundary, under the treaty with Great Britain of 1827. But, confining the inquiry to the limit of discussion observed by the pamphlet, I propose to examine the action of our Government respecting moneys received from foreign nations by virtue of treaties, awards, or diplomatic settlements of private claims. Mr. Curtis cites the first claims convention with Mexico, of 1839, and it may be well to begin with it, referring to others in order of date. The work commenced by the convention of 1839 was not concluded until after the treaty of peace of 1848, by virtue of which the United States assumed the payment of all claims of American citizens against Mexico, released Mexico therefrom, set aside from the money to be paid Mexico for territorial acquisitions $3,250,000, and provided for the adjudication of claims by a commission "whose awards shall be final and conclusive." (Treaties and Conventions, ed. 1873, pp. 568–9.) This Commission concluded its labors, and the fund provided by the treaty was distributed to the claimants who had obtained awards. One of the awards, that in favor of George A. Gardiner, on which $428,750 had been paid, it was afterwards alleged had been obtained by fraud, upon a claim very similar to that of La Abra. The attention of Congress having been called to it, a special committee was appointed by the Senate, with power to call for persons and papers; the facts developed by the investigation were furnished to the Law Department of the Government; the claimant was convicted and sentenced to ten years' imprisonment; bills were filed in the United States Courts of New York and the District of Columbia; a decree obtained "that said award be, and the same is hereby, in all things reversed and annulled;" and some $250,000 recovered back into the Treasury. (S. R. 182, 33d Cong., 1st Sess.; H. Ex. Doc. 103, 48th Cong., 1st Sess.)

Another claimant before the same Commission was Alex. J. Atocha, whose claim was rejected on its merits. He appealed to Congress, and fifteen years after the adjournment of the Commission that body passed an act authorizing the Court of Claims to re-examine his adjudicated claim, and an award was rendered in his favor by that tribunal for $207,852, which

was paid out of the Mexican fund remaining in the Treasury. (8 Ct. Cl., 427.)

In 1858 the governments of the United States and China entered into a convention to adjust the claims of American citizens against China; the sum of $735,258 was paid by China; and, in accordance with the treaty, a Commission examined and finally adjudicated the claims. Nearly ten years after the Commission had concluded its labors, upon petition of one of the rejected claimants, Nott & Co., Congress passed an act authorizing and directing the Attorney General to re-examine the case (15 Stat., 440), which was accordingly done, and $38,242 was paid to the claimant out of the Chinese fund, of which a large balance remained in the Treasury after paying all the awards of the Commission. And twenty years after the dissolution of the Commission another rejected claimant, the "Caldera," secured the passage of an act by Congress (20 Stat., 171,) reopening that case, and submitting it to a new adjudication by the Court of Claims, whereby the sum of $113,077 was paid out of the same fund.

A Joint Claims Commission was organized under the convention between the United States and New Granada in 1857, and, among others, five cases were finally decided by the umpire, awarding the American claimants, in all, $333,888. Owing to the protest of the government of New Granada, the certificates of payment provided by the treaty were not delivered to the claimants. A new convention was agreed upon in 1864, and the five cases were resubmitted to the new Joint Commission upon their merits. In four of the cases the former award was set aside and the claims rejected, and the fifth case was dismissed and the original award paid.

The claim of the "Caroline," originating in 1847, was, under instructions of four successive Secretaries of State, urged upon the Brazilian government by the American Ministers, and after a tedious examination and lengthy negotiations, was finally settled and the money paid to the Minister of the United States in 1867. The charge of fraud in the settlement was intimated by the Brazilian Minister in Washington; a

new examination of the claim on its merits was made by the Law Officer of the State Department, who decided that "Brazil was not justly liable;" and it was found that only a part of the money paid by Brazil had been remitted to the State Department. This part was returned by the Secretary of State, the facts were laid before Congress, and that body appropriated $57,500 to refund to Brazil "money erroneously claimed and paid to the United States." (18 Stat., 70; S. Ex. Doc. 52, 42d Cong. 1st Sess.)

None of these precedents seem to have attracted the attention of Mr. Curtis, but he notices the claims convention with Venezuela of 1866, and quotes Secretary Seward's position as to the finality of the awards under that compact, which he asserts, with reiterated confidence, negatives "the possibility of disturbing an award made by an international tribunal of arbitration." In the light of recent events, this citation becomes singularly infelicitous. Since Mr. Seward wrote his note in 1869, such fraud has been developed as has constrained the Congress of United States, by a unanimous vote, to request the President to open negotiations with Venezuela for the creation of a new commission and for setting aside the awards of the former tribunal; and President Cleveland has announced that a convention to that end has been signed, which, it is understood, is now before the Senate for ratification.

Mr. Curtis is equally unhappy in the citation of another precedent—the diplomatic agreement of 1884 with Hayti, whereby the claims of two American citizens were submitted to the arbitrament of Mr. Justice Strong. The usual stipulation as to the finality and binding force of the award is quoted *in extenso* (p. 8), and elsewhere (p. 15) the precedent is dwelt upon, to show the inconsistent and unwise conduct of the then Secretary of State in signing the Weil-Abra treaty. It must be believed that the author was not aware of the fact that, notwithstanding the unimpeachable character of the eminent arbitrator, the government of Hayti has protested to the Department of State against the the enforcement of both of

the awards, one on the ground of judicial error, and the other of fraud and perjury on the part of the claimant; and that, following the precedent in the Gardiner case, of the Mexican Commission, heretofore cited, a bill in equity has been filed in the Circuit Court of the United States for the Southern District of New York, praying "that it may be adjudged and decreed that said award was obtained by fraud," and that an injunction be issued against the enforcement of the same. (The Republic of Hayti *vs.* Adolphe H. Lazare, &c.)

With this array of precedents, it would seem unnecessary to further extend the list of cases. It thus appears that in the last thirty years our Government has repeatedly and in a variety of ways annulled, set aside, or re-opened awards or final settlements of claims, notwithstanding the solemn stipulations of treaties, in many instances, providing for the final and conclusive character of their first adjustment. The cases cited embrace no less than eleven different occasions in which Congress has lent its approval to such action by the passage of acts or resolutions to bring it about or carry it into effect. And to accomplish the annulment or revision of the awards, almost every method of procedure known to modern jurisprudence or diplomatic practice has been resorted to by our Government to protect the honor of the nation or do justice to claimants. These procedures may be classified as follows:

First. By a resubmission of the cases on which awards had been rendered to a new international commission, as under the conventions with Columbia and Venezuela.

Second. By an independent resort, through bills in equity, to the established domestic tribunals of the country, as in the Gardiner case under the treaty with Mexico of 1848, or in the Lazare case under the agreement with Hayti of 1884.

Third. By resubmission, through an act of Congress, to a special tribunal, as the Court of Claims, in the Atocha case under the Mexican treaty of 1848, or the "Caldera" case under the Chinese convention of 1858.

Fourth. By reference, through an act of Congress, to the Executive, clothing the Attorney General with *quasi* judicial

functions, as in the case of Nott & Co. under the Chinese treaty of 1858.

Fifth. By a direct return of the money to the foreign government by the independent action of the Secretary of State and by act of Congress, without any judicial re-examination or any hearing afforded the claimant, as in the "Caroline" case.

In the light of these facts, I respectfully submit, with all due deference to the eminent juridical attainments of the author of the pamphlet under review, that it cannot safely be accepted by the American Senate as an authoritative treatise on international practice, diplomatic history, or even domestic legislation and procedure, in matters pertaining to international private claims. It is hardly necessary to remark that there is a manifest and broad line of distinction to be drawn between arbitration on great political questions, which affect the peace and welfare of nations, and that procedure whereby governments submit the claims of private citizens to a special tribunal of exclusive and final resort. Even in the former class there are precedents for the refusal of governments to abide by and execute the awards; but in the latter the cases are very numerous, and are diversified in the causes accepted for the rehearing. Fraud is the most usual allegation, but mere error of fact or law in the award, exaggeration or deficiency of damages, and inability to obtain sufficient evidence on the part of the claimant have been regarded by our Government as satisfactory reasons for reopening the adjudications of commissions, as in several of the awards above noted. In the very cases embraced in the pending treaty the distinguished diplomatist, who acted as umpire, plainly indicated the possibility that his own decisions might be brought under review and even set aside by the two governments concerned. Sir Edward Thornton, in rendering his final declaration that he could not take into consideration evidence not before the arbitrators, used this language:

"In the case No. 477, 'Benj. Weil *vs.* Mexico,' the agent of Mexico has produced circumstantial evidence which, if not refuted by the claimant, would cer-

tainly contribute to the suspicion that perjury has been committed, *and that the whole claim is a fraud.* For the reason already given, it is not in the power of the umpire to take that evidence into consideration, but if perjury shall be proved hereafter no one would rejoice more than the umpire himself *that his decision should be reversed* and that justice should be done."

And in referring to the newly discovered evidence in La Abra claim, Sir Edward said:

"He (the umpire) doubts whether the Government of either (country) would insist upon the payment of claims founded upon perjury." (H. Ex. Doc. 103, 48th Cong., 1st. Sess., p. 128.)

Sir Frederick Bruce, the umpire in the new commission under the treaty with Columbia of 1868, in assuming jurisdiction of the five cases decided by the previous umpire, states that the idea of the new convention originated with the umpire of the former commission, and adds:

"It cannot be presumed that the umpire, whose decision ought to have been final and conclusive on the points submitted to him, would have, spontaneously and without necessity, suggested a possible mode of revision. * * * *In civil courts an appeal lies to a superior tribunal; in international courts, which recognize no superior judge, fresh negotiations are opened and a fresh commission appointed, to which the disputed cases are referred.* The Government of the United States has, in a spirit of enlightened justice, taken this course, in support of which, if necessary, it could allege the suggestion of the umpire himself." (H. Ex. Doc. 103, 48th Cong., 1st Sess., 531.)

In the presence of the declarations of these experienced judges of diplomatic and international practice, and of the numerous American cases cited, how can it be contended that the pending treaty with Mexico is without precedent? Verily, enthusiasm for international arbitration and good will among nations must be a potent charm when it can throw such a glamour over the mind of an eminent student of law and history as to hide from him the statutes and treaties of his own country and cause him to forget the events of the present generation.

I might close my review at this point, as it completes the answer to the essential question discussed in the pamphlet—the finality of awards, except for some statements made therein hardly relevant to that discussion, but which tend to raise

issues to the prejudice of the treaty. It is to be noted that the instrument now before the Senate is the natural outgrowth of the previous action of Congress. The act of June 18, 1878, (see Appendix A, annexed hereto,) was passed after a preliminary investigation and discussion by that body of the charges of fraud. In accordance with that act and upon the invitation of the Secretary of State, the Mexican Government submitted to that officer the newly discovered evidence upon which it based its allegation that both the Weil and La Abra claims were absolutely and entirely fraudulent. After an investigation extending through many months, during which time the counsel for the claimants were given various lengthy and patient hearings by Secretary Evarts, on the 8th of August, 1879, he submitted to the President his decision under the act of 1878. Mr. Curtis condenses the Secretary's decision into these words: "He reported to the President that there was no reason for setting aside the awards and granting new trials." How nearly accurate this statement is may be ascertained by consulting the decision itself. (See Appendix B.) It will be seen that the negative part of his conclusion was that the awards should not be "opened and the cases retried before a new international tribunal or under any new convention;" but the affirmative part of his conclusion was as follows:

"Second. I am, however, of opinion that the matters brought to the attention of this Government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil, and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra Silver Mining Company, and *that the honor of the United States does require* that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud."

As Mr. Evarts held that the authority for this investigation must proceed from Congress, and as that body adjourned without taking action upon the President's recommendation, the State Department paid out to the claimants the distributive share of the awards then in hand received from Mexico. As to this part of the history of the case the Supreme Court has

said: "The report of Mr. Evarts cannot be read without leaving the conviction that if the means had been afforded, the inquiries which Congress asked for would have been further prosecuted."

Upon the assumption of the duties of that Department by Mr. Frelinghuysen and the payment by Mexico of a further installment on the awards, that gentleman found, in the language of Mr. Evarts, that "the doubts which have been fairly raised" as to the integrity of the two claims had not been removed, and that "the honor of the United States" had not yet been vindicated. He further found that Secretary Blaine, just before his retirement, December 9, 1881, had transmitted to the Mexican Minister new and important evidence, incidentally unearthed by the Treasury Department, exposing the fraud, and in doing so had declared "that this Government can have no less moral interest than that of Mexico in probing any allegation of fraud whereby the good faith of both in a common transaction may have been imposed upon." (H. Ex. Doc. 103, p. 631.) The Mexican Minister, in acknowledging to Secretary Frelinghuysen the note of Mr. Blaine, wrote:

"Mexico has hitherto hoped for everything from that sentiment of honor and rectitude which, as indicated by the opinion of Mr. Evarts, could not fail to be awakened on the part of this Government when the true character of the two claims in question began to be apparent. This hope has been still further stimulated by the fact that the suspicion that said claims involve a grave fraud has been more or less directly expressed by both houses of the American Congress. Those branches of the Government, however, stopped when they reached the proceedings necessary for an investigation, each considering that it had no power to initiate such proceedings. This legation cannot for one moment suppose the political mechanism of a country, to which many others turn their eyes as to a model, to lack the means of frustrating a great fraud originated to the detriment of a friendly nation which is sparing no pains to fulfill its obligations towards the United States; nor can it believe that the only course remaining open to Mexico is to pay a heavy tribute to deceit and perjury, or that the Government of this republic is prepared to serve as an instrument for the enforcement of so painful a sacrifice." (Ib., p. 640.)

Under such circumstances the new Secretary of State reexamined the subject, and reached a conclusion somewhat

different from that of Secretary Evarts. The latter had held that the investigation should be made by the United States alone, but when he referred the question to Congress the committees of the two Houses differed as to the course to be taken. Upon the Secretary's conclusions, the House Committee reported a bill referring the two cases to the Court of Claims. (H. R., No. 1,702, 46th Cong., 2d Sess.) The Senate Committee, on the other hand, reported against referring them to the Court of Claims, and said that if they were to be re-opened it should be by a new convention. (S. R., No. 712, 46th Cong., 2d Sess.) Secretary Frelinghuysen accepted the latter view, and, in the language of the Supreme Court, "the President, believing that the honor of the United States demands it, has negotiated a new treaty providing for such a re-examination of the claims, and submitted it to the Senate for ratification." To any unbiased citizen of the republic, who is sensitive for the fair fame of his country, there ought to be nothing strange or dishonorable in this action; but the pamphlet styles it an "extraordinary history," "the unwise and ill-considered experiment of Mr. Frelinghuysen," and, in thinly disguised language it is intimated that it was brought about by discreditable, if not by corrupt means. Such charges preferred to the American Senate require no answer at my hands. Whatever criticisms may be made upon the administration of President Arthur, no stain of corruption has attached to his conduct, and it may be said with pride that he added honor and dignity to that high office. Mr. Frelinghuysen needs no vindication to his peers in the Senate. In the many years that he went in and out among them they learned to respect his talents, his exalted patriotism and his unimpeachable integrity. Such attacks can only react upon their author. The character and the memory of the dead statesman are beyond their reach.*

* Among other criticisms in the pamphlet of the action of President Arthur and Secretary Frelinghuysen, the following is found on page 15: "Whether in 1882 our Government had something to gain from Mexico, or persons whom our administration wished to aid had something to gain from Mexico or her rulers, which it was supposed might be facilitated by allowing her to have these awards set aside, it is certain that this extraordinary concession was made to her, so far as a President and a Secretary of State could make it. It is now for our Senate, the other branch of our diplomatic power, to determine whether it can allow this affair to be consummated," &c.

The claimants, having been foiled in their efforts to prevent the passage by Congress of the act of 1878, and having been thwarted in their attempts to secure from the Executive further payments upon the awards by the negotiation of the treaty, in their desperation they had resort to the remaining branch of the Government, the United States Courts, to establish what they claimed were their "vested rights" in the fruits of their fraud and perjury.

Very brief and imperfect reference is made in the pamphlet to the decision of the Supreme Court, and to complete its statement of this part of the history of the case, that decision is published herewith in full. (See Appendix C.) I have not attempted a reply to the legal arguments and citations of judicial cases with which the pamphlet abounds, for two reasons: first, because if, as I have sought to show, the diplomatic and legislative precedents entirely contradict the position that claims awards are final and cannot be re-opened, a reply to the legal arguments is unnecessary; and, second, because I claim that the Supreme Court has *completely overthrown every defense of the claimants and of the pamphlet.* In confirmation of this, reference is made to the full text of that decision, but the following extracts therefrom are here given:

"There is no doubt that the provisions of the convention (of 1868) as to the conclusiveness of the awards are as strong as language can make them. * * But this is to be construed as language used in a compact of two nations 'for the adjustment of the claims of the citizens of either * * against the other,' entered into 'to increase the friendly feeling between' republics, and 'so to strengthen the system and principles of republican government on the American continent.' No nation treats with a citizen of another nation except through his Government. The treaty, when made, represents a compact between the Governments, and each Government holds the other responsible for everything done by their respective citizens under it. The citizens of the United States having claims against Mexico were not parties to this convention. * * As to the right of the United States to treat with Mexico for a retrial, *we entertain no doubt.* Each Government, when it entered into the compact under which the awards were made, *relied on the honor and good faith of the other for protection as far as possible against frauds and impositions of individual claimants.* * * The presentation by a citizen of a fraudulent claim or false testimony for reference to the Commission was an imposition on his own Government, and if that Government afterwards discovered that it had in this way been made an instrument of wrong towards a friendly

power *it would be not only its right,* BUT ITS DUTY, *to repudiate the act and make reparation* as far as possible for the consequences of its neglect, if any there had been. International arbitration must always proceed on the principles of national honor and integrity. Claims presented and evidence submitted to such a tribunal must necessarily bear the impress of the entire good faith of the Government from which they come, and it is not to be presumed that any Government will for a moment allow itself knowingly to be made the instrument of wrong in any such proceeding. No technical rules of pleading, as applied in municipal courts, ought ever to be allowed to stand in the way of the national power *to do what is right under all circumstances.* * * The United States, when they assumed the responsibility of presenting the claims of their citizens to Mexico for payment, entered into no contract obligations with the claimants to assume their frauds and to collect on their account all that, by their imposition of false testimony, might be given in the awards of the Commission. As between the United States and the claimants, *the honesty of the claims* IS ALWAYS OPEN TO INQUIRY *for the purpose of fair dealing with the Government against which, through the United States, a claim has been made.*"

Mr. Curtis complains of the manner in which the treaty was negotiated and the secret use made of the newly discovered evidence. This is a strange misapprehenеion of the facts, but may be explained by the circumstance that he has been called into the case at a very late day. The important part of this evidence was laid before Congress and in print anterior to the passage of the act of 1878. It was again submitted to the Secretary of State in December, 1878, and January, 1879, and accessible in printed form to the claimants and their attorneys; and the whole of it has been printed for the use of the Senate in connection with the treaty, and is doubtless in the possession of the claimants, as the treaty itself appears to be. Besides, the President has communicated to the House of Representatives every essential paper and document having relation to any part of the history of these cases, and they constitute a volume of nearly eight hundred pages. (H. Ex. Doc. 103, 48th Cong., 1st Sess.) So far from any concealment having been attempted, the utmost publicity consistent with the rules of the State Department and the Senate have been observed.

The learned writer appears again to have forgotten his usual dignified conduct as an advocate, and has allowed himself to be betrayed into a method of argument rarely resorted to by those who feel strong in their cause. The allusion

to "the stimulus of a great contingent compensation * * * to *make* a case * * * in which the grossest villainy may be perpetrated" may be professional, but it sounds somewhat discordant in the discussion of a great international principle, and in a case where two sovereign nations are directly concerned. It may be that the brilliant array of legal talent whom the claimants have called from the four quarters of the Union to convince the American Senate that it is bad public policy, and dangerous to the peace and well being of nations to set aside these two awards, are actuated solely by a disinterested spirit of patriotism, but that ought not to reflect upon the legitimate means which Mexico has taken to expose and bring to the attention of the Government of the United States these unblushing frauds.*

In doing this her conduct has been above reproach, and has commanded the commendation of the Secretary of State and the Supreme Court. She has preferred the charges against the claimants upon her honor and under her responsibility as a sovereign nation and as a neighboring and sister Republic, and she holds herself ready to make the charges good, whenever and however the Government of the United States may afford her an opportunity. It will be strange, therefore, if the Senate shall

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* On page 12 of the pamphlet occurs the following: "Encouraged by the information given to it by the person above referred to, in respect to Weil's claim, and as there is reason to believe under an agreement to give this person 50 per cent. on the amounts that he could finally save to the Mexican Government by defeating both of these awards, that Government proceeded to gather proofs," &c.

It is understood that a similar declaration has heretofore been made to Senators, but this is the first time it has publicly assumed authoritative shape, and it is deemed proper that it be denied, as is now done. No such agreement has ever been made.

On the other hand, the investigation made by the Government of the United States has shown that the claimants' material witnesses have been attempting to sell to the Mexican Government the confession of their own fraud and villainy. (See enclosure to Secretary Blaine's note, H. Ex. Doc. 103, p. 635, &c.) The relations of some of the agents and attorneys of the claimants have also been made public by official documents and judicial proceedings. (See S. Doc., "Claims against Mexico," p. 143, &c.,) for a certified copy of the agreement between Weil's agent and some of his attorneys, showing that considerably more than 50 per cent. of that claim is therein pledged.

Weil, the claimant, died in an insane asylum some years ago. On the 16th of May, 1881, the Public Administrator, on behalf of Alice Weil, widow, filed a petition in the Civil District Court of New Orleans for discovery and settlement against the executors of L. B. Cain, who was Weil's attorney in fact in securing his award. The Public Administrator avers that although $171,889 has been collected on the award, the widow has never received any part of it, but, on the contrary, its collection has been concealed from her. Cain's executors filed their answer, admitting the collection of the sum named, but set up the obligations incurred in the prosecution of the claim, naming ten of the attorneys and their interests to the extent of from 85 to 90 per cent. of the whole award, claiming that there was still due from Weil's estate to that of Cain $46,887, and that there would be still further due to it $57,561. The suit is yet pending.

Some of the attorneys in the prosecution of the La Abra claim have also had an unhappy experience with their clients, and their compensation has been the occasion of litigation in the courts of the District of Columbia, but the foregoing is believed to be a fair and sufficient rejoinder to the unfounded rumor to which the pamphlet gives currency.

stand in the way of such a consummation. There has been no doubt entertained by either Congress, the Executive, or the Supreme Court that Mexico has made out a sufficient *prima facie* case to warrant an investigation. The only doubt which exists is how that investigation should be made. Unfortunately two Secretaries of State, both learned in the law and both conscientious in the discharge of their official duties, have differed on this point. Certainly the wisdom of the Senate can resolve a question of mere form. This high body and its associate Chamber have always shown themselves sensitive and jealous of the national honor. The greed of dishonest claimants or the ill advised zeal of the representatives of the Government has at times led the United States to exact from other nations considerable sums of money which were found to be excessive or inequitable; but when that has been made apparent, Congress has cheerfully undone the wrong and returned the ill gotten treasure. The last Congress did a signal act of justice of this kind in the return of the Chinese indemnity fund, and its predecessor in that of the Japanese; and the prompt and honorable action in appropriating for Brazil money which never reached the treasury has been cited.

If we can observe this course of even handed justice towards nations on the other side of the globe, certainly it is appropriate that we should deal fairly, if not generously, with our nearest neighbor. It may not affect the legal aspect of the case to say that Mexico can illy afford to pay this high premium placed upon fraud and perjury; yet, as expressed by Chief Justice Waite, that government "has promptly and in good faith met the annual payments" on the awards, even at a time when its financial straits have been so great that its own Chief Magistrate has felt compelled to submit to a reduction of fifty per cent. of his salary, when other officials have patriotically followed his example, and the interest on the public debt and other national obligations are suspended. There is much pertinency in the reference, in the decision of the Supreme Court, to the declaration of the claims treaty of 1868 that it was entered into "to increase the friendly feeling between" republics, and "so to strengthen the system and

principles of republican government on the American continent." The Mexican Minister, in a note heretofore quoted, refers to the fact that "many others turn their eyes to this country as to a model." The Spanish-American republics have copied our political institutions, and though it may be thought that they follow us at a great distance in the practice of constitutional government and civil liberty, it must not be forgotten that they have been weighed down with obstructions to which we were strangers; that we established our independence after one hundred and fifty years of colonial self-government, while they began their independent career after three hundred years of oppression and ignorance; and the close student of history and government must confess that, considering their origin and ours, they have made greater comparative advances than we. In one respect, at least, they have as high a standard of governmental action as ours. The spirit of the Spanish gentleman, which made him the type of honor, is deeply fixed in the character of Spanish-Americans and is manifested in their international intercourse. It is this spirit which has led Mexico, by the greatest sacrifices, to keep her plighted faith under the treaty, and in the same spirit she prefers these charges of fraud. To refuse her an opportunity to establish them will be to question her good faith and her honor. The Great Republic, which is regarded as a model of free government, cannot so interpret the treaty of 1868 and establish such a precedent for "republican government on the American continent."

It is idle to contend that the reopening of two cases out of two thousand decided by the Commission will "overthrow the whole system" of international arbitration. On the contrary, it will strengthen the system by indicating a method of correcting the defects of its past organization, and will be regarded as an important precedent in affording relief when the good faith of governments has been imposed upon by fraud or corruption, and will greatly tend to promote this peaceful method of adjusting international differences.

JOHN W. FOSTER,
Counsel for Mexico.

APPENDIX A.

Act of June 18, 1878.

ACT OF 1878, CHAP. 262.—AN ACT to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, eighteen hundred and sixty-eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be, and is hereby, authorized and required to receive any and all moneys which may be paid by the Mexican Republic under and in pursuance of the conventions between the United States and the Mexican Republic for the adjustment of claims concluded July fourth, eighteen hundred and sixty-eight, and April twenty-ninth, eighteen hundred and seventy-six, and whenever and as often as any installments shall have been paid by the Mexican Republic on account of said awards to distribute the moneys so received in ratable proportions among the corporations, companies, or private individuals, respectively, in whose favor awards have been made by said Commissioners or by the umpires, or to their legal representatives or assigns, *except as in this act otherwise limited or provided*, according to the proportion which their respective awards shall bear to the whole amount of such moneys then held by him, and to pay the same, without other charge or deduction than is hereinafter provided, to the parties respectively entitled thereto. And in making such distribution and payment due regard shall be had to the value at the time of such distribution of the respective currencies in which the said awards are made payable, and the proportionate amount of any award of which, by its terms, the United States is entitled to retain a part shall be deducted from the payment to be made on such award, and shall be paid into the Treasury of the United States as a part of the unappropriated money in the Treasury.

* * * * * * * * *

SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a rehearing, therefore be it enacted that the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that *the honor of the United States*, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, *until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct.* And in case of such retrial and decision any moneys paid or to be paid by the Republic of Mexico in respect of said awards, respectively, shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them. (20 Stat., 144.)

APPENDIX B.

Conclusions of Secretary Evarts.

Confidential.] AUGUST 13, 1879.

To the PRESIDENT:

I have brought to a close my examinations of the proofs, documents, and arguments laid before me on the part of the Mexican Government, both in the case of Benjamin Weil and of the La Abra Silver Mining Company, and have heard

oral argument, also, from counsel representing that Government. In reply to the application of the Mexican Government in respect to both of their cases, I have heard counsel in behalf of the parties interested in the awards respectively.

The conclusions I have come to as to the proper course to be pursued by the President under the diplomatic presentation of the cases made by the Republic of Mexico, and the request made to the President by Congress, under the fifth section of the act of June 18, 1878, providing for the distribution of the awards under the convention with Mexico, are as follows:

First. I am of the opinion that as between the United States and Mexico the latter Government has no right to complain of the conduct of these claims before the tribunal of Commissioners and umpire provided by the convention, or of the judgments given thereupon, so far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity in time and after notice to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measures, and means of the defense against the same.

I conclude, therefore, that neither the principles of public law nor considerations of justice or equity require or permit as between the United States and Mexico that the awards in these cases should be opened and the cases retried before a new international tribunal, or under any new convention or negotiation respecting the same between the United States and Mexico.

Second. I am, however, of the opinion that the matters brought to the attention of this Government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil, and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra Silver Mining Company, and that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.

If such further investigation should remove the doubts which have been fairly raised upon the representations of Mexico, the honor of the United States will have been completely maintained. If, on the other hand, the claimants shall fail in removing these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may then be dictated.

Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses.

The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.

Fourth. It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installments in hand.

I have this subordinate consideration still under examination, and should you entertain this distinction will submit my further conclusions on this point.

All which is respectfully submitted.

WM. M. EVARTS.

August 8, 1879.

The foregoing conclusions of the Secretary of State are approved.

R. B. HAYES.

August 13, 1879.

(H. Ex. Doc., 103, 48th Cong., 1st Sess., p. 581.)

APPENDIX C.

Decision of the Supreme Court of the United States.

FREDERICK T. FRELINGHUYSEN, Secretary of State, plaintiff in error, *vs.* THE UNITED STATES, EX REL. JOHN J. KEY.	891.
THE UNITED STATES, EX REL. LA ABRA Silver Mining Company, plaintiff in error, *vs.* FREDERICK T. FRELINGHUYSEN, Secretary of State.	995.

In error to the Supreme Court of the District of Columbia.

Mr. Chief Justice Waite delivered the opinion of the court on the 7th of January, 1884.

The facts on which these cases depend are as follows:

On the 14th day of July, 1868, a convention between the United States and the Republic of Mexico, providing for the adjustment of the claims of citizens of either country against the other, was concluded, and on the 1st of February, 1869, proclaimed by the President of the United States, by and with the advice and consent of the Senate. By this convention (Art. 1) "all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of the Mexican Republic, arising from injuries to their person or property by authorities of the Mexican Republic, and all claims on the part of corporations, companies, or private individuals, citizens of the Mexican Republic, upon the Government of the United States, arising from injuries to their persons or property by authorities of the United States, which may have been presented to either Government for its interposition with the other since the signature of the treaty of Guadalupe Hidalgo, * * * and which remain unsettled, as well as any other such claims which may be presented within" a specified time, were to "be referred to two Commissioners, one to be appointed by the the President of the United States, by and with the advice and consent of the Senate, and one by the President of the Mexican Republic." Provision was then made for the appointment of an umpire. Arts. II, IV, and V are as follows:

"ART. II. The Commissioners shall then conjointly proceed to the investigation and decision of the claims which shall be presented to their notice, * * * but upon such evidence or information only as shall be furnished by or on behalf of their respective Governments. They shall be bound to receive and peruse all written documents or statements which may be presented to them by or on behalf of their respective Governments in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each Government on each and every separate claim. Should they fail to agree in opinion upon any individual claim, they shall call to their assistance the umpire; * * * and such umpire, after having examined the evidence adduced for and against the claim, and after having heard, if required, one person on each side, as aforesaid, and consulted with the Commissioners, shall decide thereupon finally and without appeal. * * * It shall be competent for each Government to name one person to attend the Commissioners as agent on its behalf, to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof. The President of the United States * * * and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the umpire, as the case may be, as absolutely

final and conclusive upon each claim decided upon by them or him respectively, and to give full effect to such decision without any objection, evasion, or delay whatsoever. * * *

"ART. IV. When decisions shall have been made by the Commissioners and the arbiter in every case which shall have been laid before them, the total amount awarded in all the cases decided in favor of the citizens of the one party shall be deducted from the total amount awarded to the citizens of the other party, and the balance, to the amount of $300,000, shall be paid at the city of Mexico or the city of Washington, * * * within twelve months from the close of the Commission, to the Government in favor of whose citizens the greater amount may have been awarded, without interest. * * * The residue of the said balance shall be paid in annual installments to an amount not exceeding $300,000 * * * in any one year until the whole shall have been paid.

"ART. V. The high contracting parties agree to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible. (15 Stat., 679.)"

Under this convention Commissioners were appointed who entered on the performance of their duties. Benjamin Weil and the La Abra Silver Mining Company, citizens of the United States, presented to their Government certain claims against Mexico. These claims were referred to the Commissioners and finally resulted in an award on the 1st of October, 1875, in favor of Weil and against Mexico for $489,810.68, and on the 27th of December, 1875, in favor of La Abra Silver Mining Company for $683,041.32. On the adjustment of balances under the provisions of Art. IV of the convention, it was found that the awards against Mexico exceeded largely those against the United States, and the Government of Mexico has promptly and in good faith met its annual payments, though it seems from the beginning to have desired a re-examination of the Weil and La Abra claims.

On the 18th of June, 1878, Congress passed an act (c. 262, 20 Stat., 144), secs. 1 and 5 of which are as follows: (See Appendix A.)

During the year 1879 President Hayes caused an investigation to be made of the charges of fraud presented by the Mexican Government, and the conclusion he reached then is thus stated in the report of Mr. Evarts, the Secretary of State: (See Appendix B.)

This action of the President was communicated to Congress under date of April 15, 1880, by his forwarding a copy of the report of the Secretary of State, which concludes as follows:

"Unless Congress should now make this disposition of the matter, and furnish thereby definite instructions to the Department to reserve further payments upon these awards till the conclusion of such investigation, and to take such further order with the same thereafter as Congress might direct, it would appear to be the duty of the Executive to accept these awards as no longer open to reconsideration, and proceed in the payment of the same pro rata with all other awards under the convention."

No definite instructions were given by Congress in respect to the matter during that session, and after the close of the session payments were made on these awards by the direction of the President the same as on the others. Another installment was paid by the Mexican Government and distributed to these claimants with the rest during President Garfield's administration. After President Arthur came into office he examined the cases further, and, "believing that said award was obtained by fraud and perjury," negotiated a treaty with Mexico providing for a rehearing. This treaty is now pending before the Senate for ratification. On

the 31st of January, 1882, the sixth installment was paid by Mexico to Mr. Frelinghuysen, the present Secretary of State. A distribution of this installment to these claimants has been withheld by order of the President on account of the pending treaty.

These suits were brought in the Supreme Court of the District of Columbia to obtain writs of mandamus requiring the Secretary of State to pay to the several relators the amounts distributable to them respectively upon their disputed awards from the installment of 1882. The relator, Key, is the assignee of part of the Weil claim. In his case the Secretary filed an answer setting up the action of President Arthur in respect to this claim and the negotiation of the new treaty. To this the relator demurred. Upon the hearing the court below sustained the demurrer and awarded a peremptory writ as prayed for.

In the case of the La Abra Company a petition substantially like that of the relator Key was demurred to by the Secretary. Upon the hearing this demurrer was sustained and the petition dismissed. In this case, therefore, the action of President Arthur does not appear affirmatively on the face of the record, but it was conceded on the argument that it might properly be considered.

The writ of error in the Key case was brought by the Secretary of State, and in the other by the La Abra Company.

If we understand correctly the positions assumed by the different counsel for the relators, they are—

1. That the awards under the convention vested in the several claimants an absolute right to the amounts awarded them respectively, and that this right was property which neither the United States alone nor the United States and Mexico together could take away; and,

2. That if this were not so the action of President Hayes, under the 5th section of the act of 1878, was conclusive on President Arthur, and deprived him of any right he might otherwise have had to investigate the charges of fraud presented by the Mexican Government, or to withhold from the relators their distributive shares of any moneys thereafter paid to the Secretary of State under the authority of the first section.

1. There is no doubt that the provisions of the convention as to the conclusiveness of the awards are as strong as language can make them. The decision of the commissioners, or the umpire, on each claim, is to be "absolutely final and conclusive" and "without appeal." The President of the United States and the President of the Mexican Republic are "to give full effect to such decisions, without any objection, evasion, or delay whatsoever," and the result of the proceedings of the Commission is to be considered "a full, perfect, and final settlement of every claim upon either Government arising out of transactions prior to the exchange of ratifications of the * * * convention." But this is to be construed as language used in a compact of two nations "for the adjustment of the claims of the citizens of either * * * against the other," entered into "to increase the friendly feeling between" republics, and "so to strengthen the system and principles of republican Government on the American continent." No nation treats with a citizen of another nation except through his government. The treaty, when made, represents a compact between the Governments, and each Government holds the other responsible for everything done by their respective citizens under it. The citizens of the United States having claims against Mexico were not parties to this convention. They induced the United States to assume the responsibility of seeking redress for injuries they claimed to have sustained by the conduct of Mexico, and as a means of obtaining such redress the convention was entered into, by which not only claims of citizens of the United States against Mexico were to be adjusted and paid, but those of citizens of Mexico against the United States as well. By the terms of the compact the individual claimants could not themselves submit their claims, and proofs to the Commission to be passed upon. Only such claims as were presented to the Governments respectively could be "referred" to the Commission, and the commissioners were not allowed to investigate or decide on any evidence or information except such as

was furnished by or on behalf of the Governments. After all the decisions were made and the business of the Commission concluded the total amount awarded to the citizens of one country was to be deducted from the amount awarded to the citizens of the other, and the balance only paid in money by the Government in favor of whose citizens the smaller amount was awarded, and this payment was to be made, not to the citizens, but to their Government. Thus, while the claims of the individual citizens were to be considered by the Commission in determining amounts, the whole purpose of the convention was to ascertain how much was due from one Government to the other on account of the demands of their respective citizens.

As between the United States and Mexico, the awards are final and conclusive until set aside by agreement between the two Governments, or otherwise. Mexico cannot, under the terms of the treaty, refuse to make the payments at the times agreed on if required by the United States. This she does not now seek to do. Her payments have all been made promptly as they fell due, as far as these records show. What she asks is the consent of the United States to her release from liability under the convention on account of the particular awards now in dispute, because of the alleged fraudulent character of the proof in support of the claims which the United States were induced by the claimants to furnish for the consideration of the Commission.

As to the right of the United States to treat with Mexico for a re-trial, we entertain no doubt. Each Government, when it entered into the compact under which the awards were made, relied on the honor and good faith of the other for protection as far as possible against frauds and impositions by the individual claimants. It was for this reason that all claims were excluded from the consideration of the Commission except such as should be referred by the several Governments, and no evidence in support of or against a claim was to be submitted except through or by the Governments. The presentation by a citizen of a fraudulent claim or false testimony for reference to the Commission was an imposition on his own Government, and if that Government afterwards discovered that it had in this way been made an instrument of wrong towards a friendly power, it would be not only its right, but its duty, to repudiate the act and make reparation as far as possible for the consequences of its neglect, if any there had been. International arbitration must always proceed on the principles of national honor and integrity. Claims presented and evidence submitted to such a tribunal must necessarily bear the impress of the entire good faith of the Government from which they come, and it is not to be presumed that any Government will for a moment allow itself knowingly to be made the instrument of wrong in any such proceeding. No technical rules of pleading as applied in municipal courts ought ever be allowed to stand in the way of the national power to do what is right under all the circumstances. Every citizen who asks the intervention of his own Government against another for the redress of his personal grievances must necessarily subject himself and his claim to these requirements of international comity. None of the cases cited by counsel are in opposition to this. They all relate to the disposition to be made of the proceeds of international awards after they have passed beyond the reach of the Government and into the hands of private parties. The language of the opinions must be construed in connection with this fact. The opinion of the Attorney General in Gibbes' Case, 13 Op., 19, related to the authority of the executive officers to submit the claim of Gibbes to the second commission after it had been passed on by the first, without any new treaty between the Governments to that effect, not to the power to make such a treaty.

2. The first section of the act of 1878 authorizes and requires the Secretary of State to receive the moneys paid by Mexico under the convention, and to distribute them among the several claimants, but it manifests no disposition on the part of Congress to encroach on the power of the President and Senate to conclude another treaty with Mexico in respect to any or even all the claims allowed by the Commission, if in their opinion the honor of the United States should demand it.

At most, it only provides for receiving and distributing the sums paid without a protest or reservation, such as, in the opinion of the President, is entitled to further consideration. It does not undertake to set any new limits on the powers of the Executive.

The fifth section, as we construe it, is nothing more than an expression by Congress in a formal way of its desire that the President will, before he makes any payment on the Weil or La Abra claims, investigate the charges of fraud presented by Mexico, "and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards, * * * or either of them, should be opened and the cases retried," that he will "withhold payment * * * until the case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct." From the beginning to the end it is, in form even, only a request from Congress to the Executive. This is far from making the President for the time being a *quasi* judicial tribunal to hear Mexico and the implicated claimants and determine once for all as between them, whether the charges which Mexico makes have been judicially established. In our opinion it would have been just as competent for President Hayes to have instituted the same inquiry without this request as with it, and his action with the statute in force is no more binding on his successor than it would have been without. But his action as reported by him to Congress is not at all inconsistent with what has since been done by President Arthur. He was of opinion that the disputed "cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud," and, by implication at least, he asked Congress to provide him the means of "instituting and furnishing methods of investigation which can coerce the production of evidence or compel the examination of parties or witnesses." He did report officially that he had "grave doubt as to the substantial integrity of the Weil claim," and the "sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra * * * Company."

The report of Mr. Evarts cannot be read without leaving the conviction that if the means had been afforded the inquiries which Congress asked for would have been further prosecuted. The concluding paragraph of the report is nothing more than a notification by the President that unless the means are provided he will consider that the wishes of Congress have been met, and that he will act on such evidence as he has been able to obtain without the help he wants. From the statements in the answer of Secretary Frelinghuysen in the Key case, it appears that further evidence has been found, and that President Arthur, upon this and what was before President Hayes, has become satisfied that the contested dicisions should be opened and the cases retried. Consequently, the President, believing that the honor of the United States demands it, has negotiated a new treaty providing for such re-examination of the claims, and submitted it to the Senate for ratification. Under these circumstances it is, in our opinion, clearly within the discretion of the President to withhold all further payments to the relators until the diplomatic negotiations between the two Governments on the subject are finally concluded. That discretion of the Executive Department of the Government cannot be controlled by the judiciary.

The United States, when they assumed the responsibility of presenting the claims of their citizens to Mexico for payment, entered into no contract obligations with the claimants to assume their frauds and to collect on their account all that, by their imposition of false testimony, might be given in the awards of the Commission. As between the United States and the claimants, the honesty of the claims is always open to inquiry for the purposes of fair dealing with the Government against which, through the United States, a claim has been made.

Of course, in what we have said we expect no opinion on the merits of the

controversy between Mexico and the relators. Of that we know nothing. All we decide is, that it was within the discretion of the President to negotiate again with Mexico in respect to the claims, and that as long as the two Governments are treating on the questions involved he may properly withhold from the relators their distributive shares of the moneys now in the hands of the Secretary of State.

The judgment in the case of La Abra Company is affirmed with costs, and that in the case of Key is reversed with costs, and the cases remanded with instructions to dismiss the petition of Key.